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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971

No. 71-1377

The Ohio Annual Conference of The Methodist Church, an Ohio corporation not for profit, et al., Petitioners,

v.

Bethany Chapel, Inc., an Ohio corporation not for profit, et al., Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Donald M. Hawkins
*Thomas L. Dalrymple
Dennis L. Jarvela
300 Madison Avenue
Telephone: (419) 255-8220
Toledo, Ohio 43604

Attorneys for Petitioners

*Counsel of Record and Member of Bar of this Court upon whom Service is to be made.

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A. INTRODUCTION

Petitioners are all of those identified as plaintiffs in the caption of the amended petition in the trial court. (Appendix 6, pp. 1-5) Respondents are all of those identified as defendants in the caption of the amended petition in the trial court. (Appendix 6, pp. 5-7) The state trial court sustained respondents' demurrer to petitioners' amended petition (Appendix 5) and thereafter rendered judgment for respondents upon that basis. (Appendix 4) A state intermediate court of appeals affirmed the judgment of the trial court for respondents. (Appendix 3) The state supreme court dismissed petitioners' appeal upon constitutional questions and denied petitioners' motion to certify the record. (Appendixes 1 and 2) No court below delivered an opinion.

The orders of the Supreme Court of Ohio sought to be reviewed were rendered and entered January 28, 1972. This petition for certiorari was filed within 90 days of that date. Jurisdiction is invoked under 28 U.S.C. §1257, which provides in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision

could be had, may be reviewed by the Supreme Court as follows:

* * *

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

(Emphasis added.)

B. QUESTIONS PRESENTED

1. Where First Amendment proscriptions are not involved, does the Fourteenth Amendment of the Constitution of the United States require state courts to determine church property disputes?

2. Can a state civil court constitutionally refuse to decide property disputes of a religiously motivated unincorporated association where decision is not dependent upon determinations of tenets of religious faith or church doctrinal matters while such decision is available to others?

3. Does the Fourteenth Amendment of the Constitution of the United States require state civil courts so available to others of like nature to decide church property disputes not involving resolution of tenets of religious faith or church doctrinal matters?

4. In a church property dispute case not involving determinations of tenets of religious faith or church doctrinal matters, can a state court constitutionally deny an unincorporated church association any opportunity to present evidence?

5. Is an unincorporated church association constitutionally without recourse in civil courts to protect its properties against wrongful disposition at will by officials who assumed their offices and title to the properties under trusts expressed only in church documents?

C. CONSTITUTIONAL PROVISIONS INVOLVED

Two portions of the Constitution of the United States are involved in this case. Section 1 of Amendment XIV of the Constitution of the United States, U.S.C., provides in part:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment I of the Constitution of the United States, U.S.C., provides in part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *"

D. STATEMENT OF THE CASE

Petitioners, corporate and individual officials of The United Methodist Church, filed in the state trial court

this equitable action against respondents, a corporation and individuals and office holders of Bethany United Methodist Church, seeking to enjoin the wrongful appropriation, transfer and misuse of church properties (realty, personalty and moneys) and to quiet title to said properties and to obtain an accounting of funds and to obtain other equitable relief. (Amended Petition; Appendix 6) Respondents demurred to the amended petition on the ground that it did not state a cause of action. The state trial court granted respondents' demurrer on March 3, 1971. (Order; Appendix 5) Petitioners having declined to plead further, the state trial court rendered final judgment for respondents on March 31, 1971. (Judgment; Appendix 4)

In the state trial court, petitioners' amended petition (Appendix 6) sought due process and thus raised the constitutional questions here presented. Petitioners appealed on questions of law to the state intermediate appellate court (Appendix 3) upon the assignment of error that the trial court erred in granting the demurrer of respondents to the amended petition and the express assertion that, although constitutionally precluded from determining tenets of religious faith or church doctrinal matters, civil courts must continue to apply legal principles to decide property disputes not dependent upon such forbidden determinations. (Appellants'

Brief and Assignment of Error in the Court of Appeals of Lucas County, Ohio) On November 1, 1971, the state intermediate appellate court entered its judgment affirming the judgment of the state trial court. (Appendix 3) Petitioners then gave notice of appeal to the state supreme court upon the grounds that the case involves a substantial constitutional question and is of public and great general interest. (Notice of Appeal to Supreme Court of Ohio) In the state supreme court, petitioners urged in writing that the First Amendment to the Constitution of the United States restricts civil courts' determination of church property disputes only where resolution of tenets of religious faith or church doctrinal matters is essential to a decision as to property rights and that the Fourteenth Amendment to the Constitution of the United States requires state courts to decide church property disputes not dependent upon determinations of tenets of religious faith or church doctrinal matters. (Appellants' Memorandum in Support of Jurisdiction in the Supreme Court of Ohio) On January 28, 1972, the state supreme court refused to hear the case upon its merits (Appendixes 1 and 2); and this petition is filed within 90 days thereafter.

Since the judgment of the state trial court was based upon a demurrer to the amended petition, a procedural circumstance equivalent to a motion to dismiss a complaint for failure to state a

claim upon which relief can be granted under the Ohio Rules of Civil Procedure (or the Federal Rules of Civil Procedure), all factual circumstances pertinent to this appeal are revealed in the amended petition, which, as a convenience, is attached to this petition as Appendix 6; and all record references in this paragraph are to that document. Petitioners are a corporate title holder for, and some officials of, The United Methodist Church. (Paragraphs 1 through 4). Respondents are a corporation and some individuals who held offices in Bethany United Methodist Church, a subordinate unit of The United Methodist Church, a connectional church, in accordance with the laws, customs and usages of The United Methodist Church. (Paragraphs 5 through 7 and 4) The Discipline of The United Methodist Church is a written publication authorized and declared by the General Conference of that church establishing organizational structure and principles and making provisions for administration of the properties and trust obligations of that church. (Paragraphs 2, 3, 8, 10, 12 and 15) Respondents have violated established custodial procedures for the use of properties, real and personal, of The United Methodist Church. (Paragraphs 8 and 9) The individual respondents, in disregard of the trusts of the offices which they held and in direct violation of the published established rules of the

organization in whose offices they served, incorporated Bethany United Methodist Church into the corporate defendant-appellee. (Paragraphs 10 and 11) Respondents have, in disregard of the trusts of the offices which they held and in direct violation of the established written regulations to which they were subject, transferred real properties, tangible personal properties and monetary funds of The United Methodist Church to the corporate respondent. (Paragraphs 12 through 22) The actions of respondents disrupted and damaged petitioners' functions, halted proper and legal use of United Methodist Church properties and irreparably injured and damaged petitioners in a continuing manner. (Paragraphs 23 and 24) Petitioners have sought traditional equitable relief in the state trial court. (Prayer paragraphs a through g)

E. REASONS FOR ALLOWANCE OF WRIT

Individual respondents, having undertaken unincorporated local church offices and consequently become holders of title to local church properties subject to trusts expressed in general church documents dealing with church properties, have ignored these trusts, treated the church properties as their

own and transferred these properties to the corporate respondent, a creature of their own making. All of this has been accomplished without legal obstacles under cover of federal religious freedom constitutional proscriptions not applicable to the facts of this case. Petitioners have been denied generally applicable legal property protections by the courts below in violation of federal due process and equal protection constitutional requirements. Further revelation of these circumstances follows.

---

1. The decision of the courts below is explainable only upon the basis of judicial misunderstanding of constitutional religious freedom requirements.

In this case, the threshold action of the state trial court was to grant petitioners' prayer for a temporary restraining order. Shortly thereafter, the state trial court decreed a temporary injunction pendente lite after hearing. Subsequently, the state trial court granted respondents' demurrer upon the basis that petitioners had failed to state a claim upon which relief could be granted. The state trial court had apparently become convinced that federal religious freedom constitutional requirements,

applying First Amendment to state activities by reason of Fourteenth Amendment provisions, precluded it from acting. State appellate courts affirmed and left standing the action of the state trial court.

Neither competent courts nor wise legal scholars have ever supposed that the role of civil courts in the determination of property disputes was not subject to constitutional limitations. However, the impact of those constitutional limitations upon civil court determinations of disputes affecting church properties was not emphatically delineated until the decision in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969). In that case, the Georgia courts had determined a church property dispute by application of a departure-from-doctrine standard under which a jury decision as to whether the general church had abandoned or departed from the tenets of faith governed disposition of the property. In reversing the Supreme Court of Georgia and remanding the cause for further proceedings, the Supreme Court of the United States said at page 449:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in

resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, Abington School District v.

> Schempp, 374 U.S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."

The amended petition in the instant case seeks no resolution of a controversy over religious doctrine; instead, it asks only a determination of a church property dispute upon the basis of generally applicable legal principles and is not at odds with the limitation imposed by the First Amendment.

The case which drew the attention of courts below was the decision in Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen, 21 Ohio St. 2d 154 (1970), cert. denied 400 U.S. 827 (1970). In that case, an Ohio court had made its determination of religious doctrinal matters the predicate for its resolution of a church property dispute. In reversing the decision and remanding the cause for further proceedings, the state supreme court said at pages 154 and 160-2:

"* * * This case is before the court upon remand by the Supreme Court of the United States for further consideration in light of that court's decision in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church (1969), 393 U.S. 440, 89 S. Ct. 601.

* * *

"* * * Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation.

* * *

"The control of the name and property, of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine."

In the instant action, the amended petition pleads the existence of an express trust in other secular instruments in the provisions of the Discipline not requiring any resolution of religious tenets or doctrine and is therefore in strict compliance with the rule enunciated by this court for civil court determinations of church property disputes. Since respondent corporation was unauthorizedly formed by respondents as a vehicle for their converting transfers of properties of an unincorporated local church unit, the corporate documents are not pertinent to respondents' obligations.

---

2. In the United Methodist and other connectional religious denominations, many church properties will be in jeopardy at the whim of nominal title holders unless constitutional due process and equal protection require civil courts to decide church property disputes not involving determinations of religious doctrine or tenets of faith.

Although, as indicated by the actions of the courts below, state courts

are now devoting a great deal of attention to the federal religious freedom constitutional limitations of the First Amendment as applied through the Fourteenth Amendment to the states, little or no attention is focusing upon the federal due process constitutional requirements of the Fourteenth Amendment upon state courts confronted with church property disputes of the nature here presented. The monstrosity of the concept that nominal title holders of church properties are entirely free of legal restraints in their use and disposition of such properties, as successfully relied upon by respondents, emphasizes the necessity for authoritative scrutiny.

It has long been established law in Ohio and elsewhere that those withdrawing from a general church cannot take with them the church properties and cannot deprive the general church of the control and use of those properties. In Russian Orthodox Greek Catholic St. Peter and St. Paul's Church of Lorain, Ohio v. Burdikoff, 117 Ohio App. 1 (Lorain County 1962), motion to certify overruled December 19, 1962, appeal dismissed, 174 Ohio St. 140 (1962), plaintiff church officials, in their amended petition, sought an injunction preventing defendants from occupying the church building, precluding a defendant from officiating as a priest in the church building and requiring an accounting of all monies and

funds and a restoration of all property, both real and personal, to the church. The common pleas court entered a decree for plaintiff. After a trial de novo, the court of appeals entered the same decree, saying at page 5 of its opinion:

> "It has long been the accepted rule in the government of religious societies which are in association with an ecclestiastical system, that, where one or many of the members withdraw from the general church, they cannot take with them the church property. That property, in the absence of agreement, remains under the jurisdiction and control of the general church.
> * * *"

A cause of action strikingly similar to that alleged in the amended petition in the instant case was asserted successfully in Ohio Southeast Conference of The Evangelical United Brethren Church v. Kruger, 46 Ohio Op. 2d 10, 243 N.E. 2d 781 (Common Pleas Court, Fairfield County 1968). In that case, plaintiffs sought temporary and permanent injunctions to prevent defendants from disposing of, and interfering with, church property and from preaching or holding meetings in the church and from interfering in any way with the duly assigned minister of the church and

from holding any meetings in the church except as authorized by the Discipline. The decree sought by these petitioners was entered by the court after trial. After finding that the EUB Church was a connectional church and that the Mills Memorial EUB Church was a subordinate member of it, the court stated:

> "Since the organization of the EUB Church is connectional in form, not congregational, the Mills EUB is only a part of the larger body and, therefore, may not convert its property to use not authorized by the superior church government. See Watson v. Jones, 80 U.S. 679.
>
> "Uniformly the decisions hold that while the legal title to church property may be in the trustees, the use of the property is controlled by the usages, customs and Discipline of the church in general. * * *"
>
> (46 Ohio Op. 2d 10, at p. 15)

Not only the "due process" clause of the Fourteenth Amendment but also its "equal protection" clause requires state civil courts to entertain actions of the instant nature for determination of church property disputes not involving

determinations of tenets of religious faith or church doctrinal matters. If the documents of trust to which reference was sought were constitutions or rules of garden clubs or trout fishermens' associations, no civil court would hesitate to accord them due significance. The property trust provisions of the general church discipline are entitled to equal effect so long as religious freedom is not impaired.

Indeed, Ohio courts and those of other states have long extended due deference to the rules of non-religious voluntary associations even where such rules established procedures for final settlement of property disputes. In Lough v. Varsity Bowl, Inc., 16 Ohio St. 2d 153 (1968), a quasi-judicial decision of a property dispute under the laws of the American Bowling Congress, a voluntary nonprofit membership association, was upheld as final. In its syllabus, the court held:

> "Where the rules of a voluntary association provide for the final settlement of disputes among its members, its action thereunder will not be reviewed by the courts, in the absence of allegations of arbitrariness, fraud, or collusion, even though property rights may be involved."

At page 155 in its opinion, the court said:

> "The facts in the instant case fall within the rule, with which we agree, that where the duly adopted laws of a voluntary association provide for the final settlement of disputes among its members, by a procedure not shown to be inconsistent with due process, its action thereunder is final and conclusive and will not be reviewed by the courts in the absence of arbitrariness, fraud, or collusion.* * *"

F. CONCLUSION

Confusion has arisen in the state courts as to the scope of the federal religious freedom constitutional limitations to which they are subject in cases involving church property disputes. Misconceptions of the magnitude of those limitations, as displayed in the decisions of the courts below in the instant case, subject churches to monstrous injustices in the protection of their property rights. Federal due process and equal protection constitutional requirements of state courts in cases

involving church property disputes have not been delineated, although such clarification is rendered essential by recent judicial delineations of federal religious freedom constitutional limitations. Having been decided upon demurrer to a pleading which therefore sets forth the undisputed facts in convenient form, this case furnishes the opportunity for authoritative determination of federal constitutional questions of increasing concern and wide impact.

For these reasons, a writ of certiorari should issue to review the judgment below.

Respectfully submitted,

Of Counsel for Petitioners:

Fuller, Henry, Hodge & Snyder
300 Madison Ave.
Toledo, Ohio 43604

Donald M. Hawkins
Thomas L. Dalrymple
Dennis L. Jarvela

300 Madison Avenue
Tel. (419) 255-8220
Toledo, Ohio 43604

Attorneys for Petitioners

G. CERTIFICATE OF SERVICE

Three (3) copies each of the foregoing petition have been deposited in the mail with first class postage prepaid this 24th day of April, 1972, to Dan H. McCullough and George S. Taylor, attorneys for respondents herein, at their offices at 700 Security Building, Toledo, Ohio 43604, and 3433 Upton Avenue, Toledo, Ohio 43613, respectively.

s/ TLDalrymple
Thomas L. Dalrymple,
an Attorney for
Petitioners

H. APPENDIXES

THE SUPREME COURT OF THE STATE
OF OHIO

THE STATE OF OHIO,) 1972 TERM
City of Columbus)

To wit:
Ohio Annual Conference of The Methodist Church et al., January 28, 1972

Appellants, No. 71-770

vs.

APPEAL FROM THE
Bethany Chapel, Inc., et al., COURT OF APPEALS

Appellees. FOR LUCAS COUNTY

This cause, here on appeal as of right from the Court of Appeals for LUCAS County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for LUCAS County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied

from the Journal of this Court.

Witness my hand and the seal of the Court this 11th day of February, 1972

THOMAS L. STARTZMAN Clerk

s/ Sam F. Jenkins Deputy

THE SUPREME COURT OF THE STATE
OF OHIO

THE STATE OF OHIO,) 1972 TERM
City of Columbus)
To wit:
Ohio Annual Conference January 28, 1972
of The Methodist Church
et al., No. 71-770
Appellants,
vs. MOTION FOR AN ORDER
DIRECTING THE COURT
Bethany Chapel, Inc., OF APPEALS
et al., For LUCAS County
Appellees. TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:
Motion Fee, $20.00, paid by Fuller, Henry, Hodge & Snyder.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 11th day of February, 1972

THOMAS L. STARTZMAN Clerk

s/ Sam F. Jenkins Deputy

APPENDIX 2

MB
JE Jour 16-76
Man. Jour 20-103

IN THE COURT OF APPEALS OF LUCAS COUNTY, OHIO

THE OHIO ANNUAL CONFERENCE OF THE METHODIST CHURCH, AN OHIO CORPORATION NOT FOR PROFIT, ET AL., C.A. No. 7014

APPELLANTS JUDGMENT ENTRY

-vs-

BETHANY CHAPEL, INC., AN OHIO CORPORATION NOT FOR PROFIT, ET AL.,

APPELLEES.

This cause came on for hearing on an Appeal on Questions of Law from the Common Pleas Court of Lucas County, Ohio, and the same was argued by counsel, and the Court finds that this cause of action was submitted to the Common Pleas Court of Lucas County, Ohio, on Appellants' and then plaintiffs' Amended Petition, and on a general Demurrer of the now Appellees and then defendants, and that it was the judgment of the

APPENDIX 3
(p. 1)

Common Pleas Court of Lucas County, Ohio, that the Demurrer should be and it was granted, and the Appellants and then plaintiffs elected to stand on the Amended Petition without further amendment, and the Amended Petition of the then plaintiffs and now Appellants was thereupon dismissed.

This Court finds that the allegations of Appellants' Amended Petition show formal title to the subject property in the Appellees and that no express trust was declared or created by Appellees for the benefit of Appellants, and that The Book of Discipline of The United Methodist Church was adopted solely by Appellants and does not and did not constitute an express trust or declaration of an express trust consented to by Appellees for the benefit of Appellants, and that therefore such allegations do not state a cause of action.

The Court further finds there was no error in the judgment of the Common Pleas Court of Lucas County, Ohio, prejudicial to the Appellants and the judgment of the Common Pleas Court of Lucas County, Ohio, sustaining the Demurrer of the Appellees is affirmed at Appellant's costs and the said cause is remanded to the Common Pleas Court of Lucas County, Ohio, for execution for costs.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the judgment of the

Common Pleas Court of Lucas County, Ohio, sustaining the Demurrer of the Appellees is affirmed at Appellants' costs, and the cause is remanded to the Common Pleas Court of Lucas County, Ohio, for execution for costs.

To all of which findings, orders, judgments and decrees exceptions are saved to all parties.

s/ John W. Potter
Judge

s/ Clifford F. Brown
Judge

s/ Dudley F. Smith
Judge

APPROVED:

s/ T. L. Dalrymple	s/ Dan H. McCullough
Thomas L.Dalrymple	Dan H. McCullough
s/Dennis L.Jarvela	s/ George S. Taylor
Dennis L. Jarvela	George S. Taylor
405 Madison Ave.	700 Security Bldg.
Toledo,Ohio 43604	Toledo, Ohio 43604
241-7221	243-2101
Attorneys for Appellants	Attorneys for Appellees

Judge Dudley F. Smith,Retired. Assigned to active duty under authority of Section 6(C), Article IV, Constitution

APPENDIX 3

COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

The Ohio Annual Conference of The Methodist Church, an Ohio corporation not for profit, et al.,	)	
Plaintiffs,	)	No. 207122
v.	)	
Bethany Chapel, Inc., an Ohio corporation not for profit, et al.,	)	JUDGMENT
Defendants.	)	

The court having sustained defendants' demurrer to the amended petition and granted plaintiffs time within which to file a second amended complaint and said time having expired without the filing of such a second amended complaint, the court finds that defendants are now entitled to judgment.

It is, therefore, ORDERED, ADJUDGED AND DECREED that plaintiffs' amended petition be, and it hereby is, dismissed with prejudice; that judgment be, and it hereby is, rendered for defendants and that the clerk of this court be, and he hereby is, directed to assess the costs of this action against plaintiffs.

To all of the foregoing, plaintiffs

duly except.

/s/ George Kiroff
Judge

Approved:

/s/ T. L. Dalrymple
Thomas L. Dalrymple

/s/ Dennis L. Jarvela
Dennis L. Jarvela

405 Madison Avenue
Telephone: 241-7221
Toledo, Ohio 43604

Attorneys for Plaintiffs

/s/ Dan H. McCullough
Dan H. McCullough

700 Security Building
Telephone: 243-2101
Toledo, Ohio 43604

Attorney for Defendants

COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

The Ohio Annual Conference of The Methodist Church, an Ohio corporation not for profit, et al.,	)	
Plaintiffs,	)	
	)	No. 207122
v.	)	
Bethany Chapel, Inc., an Ohio corporation not for profit, et al.,	)	ORDER
Defendants.	)	

This day this cause came on to be heard upon the demurrer of defendants to the amended petition; and the court, being fully advised in the premises, finds that said demurrer is well taken.

It is, therefore, ORDERED, ADJUDGED AND DECREED that defendants' demurrer to the amended petition be, and it hereby is, granted; and that plaintiffs be, and they hereby are, given leave to file a second amended complaint within twenty (20) days, at the expiration of which time in the absence of such filing, the court will render judgment for defendants; and that any injunction heretofore granted restraining and enjoining these defendants from disposing of, interfering with, conveying, encumbering, or transferring title to any property, real

and personal, heretofore possessed, or transferred to Bethany Chapel, Inc. from Bethany United Methodist Church be, and it hereby is, dissolved and the injunction bond be, and it hereby is, released.

To all of the foregoing, plaintiffs duly except.

/s/ George N. Kiroff
Judge

Approved:

/s/ T. L. Dalrymple
Thomas L. Dalrymple

/s/ Dennis L. Jarvela
Dennis L. Jarvela

405 Madison Avenue
Telephone: 241-7221
Toledo, Ohio 43604

Attorneys for Plaintiffs

/s/ Dan H. McCullough
Dan H. McCullough

700 Security Building
Telephone: 243-2101
Toledo, Ohio 43604

Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF
LUCAS COUNTY, OHIO

The Ohio Annual Conference of The Methodist Church, an Ohio Corporation not for profit, 395 East Broad Street, Columbus, Ohio 43215,	)	No. 207122
Dr. John W. Seay, as a member of The Board of Trustees, The Ohio Conference of The Methodist Church, 3486 Epworth Avenue, Cincinnati, Ohio 45211,	)	AMENDED PETITION
Oren A. Dickason, as a member of The Board of Trustees, The Ohio Conference of The Methodist Church, 508 National Bank Building, Lima, Ohio 45801,	)	
Reverend Evan R. Owens, as a member of The Board of Trustees, The Ohio Conference of The Methodist Church, Bethesda Hospital, 619 Oak Street, Cincinnati, Ohio 45206,	)	

Lloyd E. Fisher, Jr.,
as a member of The
Board of Trustees,
The Ohio Conference
of The Methodist
Church,
17 South High Street,
Columbus, Ohio 43215,

Reverend Charles A. Farthing,
as a member of The Board
of Trustees, The Ohio
Conference of The Methodist
Church,
395 East Broad Street,
Room 304,
Columbus, Ohio 43215,

Dr. Austin R. Whitmore,
as a member of The
Board of Trustees, The
Ohio Conference of The
Methodist Church,
395 East Broad Street,
Room 306,
Columbus, Ohio 43215,

Charles Porter,
as a member of The
Board of Trustees, The
Ohio Conference of The
Methodist Church,
Toledo Trust Company,
245 Summit Street,
Toledo, Ohio 43604,

Dr. Robert A. Byler,
as a member of The
Board of Trustees,
The Ohio Conference
of The Methodist Church,
382 North South Street,
Wilmington, Ohio 45177,

Dr. Waldemar A. Haupt,
as a member of The
Board of Trustees,
The Ohio Conference
of The Methodist Church,
140 Stonemill Road,
Dayton, Ohio 45409,

T. Kline Hamilton,
as a member of The
Board of Trustees,
The Ohio Conference
of The Methodist Church,
2250 East Broad Street,
Columbus, Ohio 43209,

William A. Clark,
as a member of The Board
of Trustees, The Ohio
Conference of The
Methodist Church,
Third National Bank Building,
Dayton, Ohio 45402,

W. T. Wilson,
as a member of The
Board of Trustees,
The Ohio Conference
of The Methodist Church,
3467 Hudson Avenue,
Cincinnati, Ohio 45207,

Dr. Harry F. Baker,
as a member of the Board
of Trustees, The Ohio
Conference of The
Methodist Church,
Box 68,
Worthington, Ohio 43085,

Robert L. Burton, Jr.,
as a member of The
Board of Trustees, The
Ohio Conference of The
Methodist Church,
2122 Ontario Avenue,
Springfield, Ohio 45505,

Walter R. Dickhaut, Sr.,
District Superintendent,
Toledo District,
Ohio Annual Conference,
The United Methodist Church,
622 Gardner Building
Toledo, Ohio 43604,

and

Harold G. Cowdrick,)
Box 296,)
Grand Rapids, Ohio 43522,)
)
Plaintiffs,)
)
-vs-)
)
Bethany Chapel, Inc.,)
an Ohio Corporation)
not for profit,)
Yawberg Road and Box Road;)
Providence Township,)
Lucas County, Ohio,)
)
Fred Miller,)
individually and as a)
member of the Board of)
Trustees, Bethany United)
Methodist Church,)
RR 1,)
Grand Rapids, Ohio 43522,)
)
Walter Carlen,)
individually and as a)
member of the Board of)
Trustees,)
Bethany United)
Methodist Church,)
RR 1,)
Grand Rapids, Ohio 43522,)

Vance Eugene Thorn,
individually and as a
member of the Board of
Trustees, Bethany
United Methodist Church,
816 East Street,
Liberty Center, Ohio 43532,

Mrs. Earl Conner,
individually and as a
member of the Board of
Trustees, Bethany United
Methodist Church,
RR 1,
Liberty Center, Ohio 43532,

Richard E. Barton,
individually and as a member
of the Board of Trustees,
Bethany United Methodist
Church,
RR 1,
Grand Rapids, Ohio 43522,

Mrs. Harold Ott,
individually and as a member
and Special Treasurer of
the Board of Trustees, Bethany
United Methodist Church,
RR 1,
Grand Rapids, Ohio 43522,

James Box,
individually and as a
member of the Board of
Trustees, Bethany United
Methodist Church,
RR 1,
Grand Rapids, Ohio 43522,

Junior H. Ryan,
individually and as a
member of the Board
of Trustees, Bethany United
Methodist Church,
RR 1,
Grand Rapids, Ohio 43522

and

Mrs. James Box,
individually and as
Treasurer of the Board
of Trustees, Bethany
United Methodist Church,
RR 1,
Grand Rapids, Ohio 43522,

Defendants.

For its cause of action against defendants, plaintiffs say as follows:

1. Plaintiff, The Ohio Annual Conference of The Methodist Church, is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, and is a title holding entity for real and personal property of

the United Methodist Church of Ohio.

2. Plaintiffs Dr. John W. Seay, Oren A. Dickason, Reverend Evan R. Owens, Lloyd E. Fisher, Jr., Reverend Charles A. Farthing, Dr. Austin R. Whitmore, Charles Porter, Robert A. Byler, Waldemar A. Haupt, T. Kline Hamilton, William A. Clark, W. T. Wilson, Dr. Harry F. Baker and Robert L. Burton, Jr., are the duly elected members of The Board of Trustees, The Ohio Conference of The Methodist Church, pursuant to the Discipline of The United Methodist Church as presently authorized and declared by the General Conference of said church, which Discipline in Paragraph 1519.3 contains the following provision:

> "The board may intervene and take all necessary legal steps to safeguard and protect the interests and rights of the Annual Conference anywhere and in all matters relating to property and rights to property whether arising by gift, devise, or otherwise, or where held in trust or established for the benefit of the Annual Conference or its membership."

(The Book of Discipline of The United Methodist Church, p. 468 ¶1519.3 (1968))

3. Plaintiff Walter R. Dickhaut, Sr. is the duly constituted and acting District Superintendent, Toledo District, Ohio Annual Conference, The United Methodist Church, pursuant to the Discipline as presently authorized and declared by the General Conference of said church, which Discipline in Paragraph 354.11 contains the following provision:

> "Duties of a District Superintendent.--District superintendents are to be chosen and appointed by the bishop. They shall minister to the needs of the pastors and churches in their district by meeting and counseling with pastors and officials. Among the duties of the district superintendent are the following:
>
> * * *
>
> "To see that the provisions of the Discipline are observed and to interpret and decide all questions of church law and discipline raised by the churches in his district, subject to an appeal to the president of the next Annual Conference."

(The Book of Discipline of The United Methodist Church, p. 131 ¶354.11 (1968))

4. Plaintiff Harold G. Cowdrick is and has been since June 16, 1968, the duly appointed pastor of Bethany United Methodist Church, a subordinate unit of The United Methodist Church, a connectional church, in accordance with the laws, customs and usages of The United Methodist Church.

5. Defendant Bethany Chapel, Inc. is a corporation not for profit, duly organized and existing under the laws of the State of Ohio.

6. Defendants Fred Miller, Walter Carlen, Vance Eugene Thorn, Mrs. Earl Conner, Richard E. Barton, Mrs. Harold Ott, James Box and Junior H. Ryan, are members of the Board of Trustees of Bethany United Methodist Church and are associated with Bethany Chapel, Inc.

7. Defendant Mrs. James Box is Treasurer of the Board of Trustees of Bethany United Methodist Church and is associated with Bethany Chapel, Inc.

8. The Discipline of The United Methodist Church as presently authorized and declared by the General Conference of said church includes the following provisions:

> "Special Provisions.--1. A pastor shall first obtain the written consent of his district

superintendent before engaging for an evangelist any person who is not a conference evangelist, a regular member of an Annual Conference, a lay pastor, or a certified lay speaker in good standing in The United Methodist Church."

(The Book of Discipline of The United Methodist Church, p. 128 ¶351.1 (1968))

"No pastor shall engage for an evangelist any person who is not a conference evangelist, a regular member of an Annual Conference, a lay pastor, a local preacher, or a lay speaker in good standing in The United Methodist Church without first obtaining written consent of his district superintendent."

(The Book of Discipline of The United Methodist Church, p. 330 ¶1152.4 (1968))

"Subject to the direction of the Charge Conference as hereinabove provided, the Board of Trustees shall receive and administer all bequests made to the local church; shall receive and administer all trusts; shall invest all trust funds of the local church

in conformity with laws of the country, state, or like political unit in which the local church is located; and shall have the supervision, oversight, and care of all real property owned by the local church and of all property and equipment acquired directly by the local church or by any society, board, class, commission, or similar organization connected therewith; provided that the Board of Trustees shall not violate the rights of any local-church organization elsewhere granted in the Discipline; provided further, that the Board of Trustees shall not prevent or interfere with the pastor in the use of any of the said property for religious services or other proper meetings or purposes recognized by the law, usages, and customs of The United Methodist Church, or permit the use of said property for religious or other meetings without the consent of the pastor, or in his absence the consent of the district superintendent; and provided further, that pews in the United Methodist Church shall always be free; and provided further, that the Church Local Conference may assign certain of these duties

to a building committee as set forth in ¶1545."

(The Book of Discipline of The United Methodist Church, p. 477 ¶1536 (1968))

9. The defendants Fred Miller, Walter Carlen, Vance Eugene Thorn, Mrs. Earl Conner, Richard E. Barton, Mrs. Harold Ott, James Box, Junior H. Ryan, Mrs. James Box, and Bethany Chapel, Inc., and its agents, without the consent of the pastor, Harold G. Cowdrick, and without the consent of the District Superintendent, Walter R. Dickhaut, Sr., have prevented and interfered with plaintiff Cowdrick in the use of the church building located at Yawberg Road and Box Road, Providence Township, Lucas County, Ohio, for religious services recognized by the law, usages and customs of The United Methodist Church in the following respects, to wit:

a. In that in a correspondence dated October 24, 1969, and addressed to The Congregation of Bethany Chapel, Inc., the defendant Bethany Chapel, Inc. and its agents state that two communications have been sent to plaintiff Cowdrick, which communications state in part:

"After this date, we will be

responsible for our own speakers. * * *"

* * *

"As you were informed last week, we will supply our own speakers for all future services beginning this Sunday, October 26, 1969."

(Correspondence from Bethany Chapel, Inc., To the Congregation of Bethany Chapel, Inc., dated October 24, 1969)

The correspondence addressed to the congregation also states:

"This Sunday, October 26, at 9:00 a.m. a non-denominational Evangelist will be speaking at Bethany Chapel. Those who have heard him certainly encourage you to be there and bring a friend!

"Next Sunday there will be another special speaker at 9:00 a.m.

"Monday, November 3, at 8:00 p.m. Charles Younkman, former Lucas County Associate Agricultural Agent will show a 16 m.m. color film at Bethany

Chapel, Inc. (corner of Box and Yawberg roads). This film portrays the efforts of Campus Crusade in reaching college youth for Christ. You won't want to miss this service."

(Correspondence from Bethany Chapel, Inc., To the Congregation of Bethany Chapel, Inc., dated October 24, 1969)

All parts of the correspondence indicated show defendants' intention to violate the provisions of the Discipline.

b. In that on October 26, 1969 plaintiff Cowdrick attempted to conduct a Sunday religious service in the church building at Yawberg Road and Box Road, Providence Township, Ohio, according to the Discipline and his duly authorized duties. Defendants forced plaintiff Cowdrick to leave the pulpit and discontinue his attempt to conduct a religious service. Defendants informed plaintiff Cowdrick that he would not be allowed to speak, and defendants permitted an evangelist of their own choosing to conduct the service without the consent of plaintiff Cowdrick or of plain-

tiff Dickhaut, all contrary to the Discipline of The United Methodist Church as set forth in Paragraphs 351.1, 1152.4 and 1536.

c. In that on November 2, 1969 plaintiff Cowdrick again attempted to conduct a Sunday religious service in the church building at said Yawberg Road and Box Road according to the Discipline and his duly authorized duties. Defendants forced plaintiff Cowdrick to leave the pulpit and discontinue his attempt to conduct a religious service. Defendants informed plaintiff Cowdrick that he would not be allowed to speak, and defendants permitted a speaker of their own choosing to conduct the service without the consent of plaintiff Cowdrick or of plaintiff Dickhaut and contrary to the Discipline of The United Methodist Church as set forth in Paragraphs 351.1, 1152.4 and 1536.

d. In that on November 9, 1969 defendants again prevented plaintiff Cowdrick from conducting a Sunday religious service in the church building at said Yawberg Road and Box Road according to the Discipline and his duly authorized duties. Defendants

permitted a speaker of their own choosing to conduct the service without the consent of plaintiff Cowdrick or of plaintiff Dickhaut and contrary to the Discipline of The United Methodist Church as set forth in Paragraphs 351.1, 1152.4 and 1536.

10. The Discipline of The United Methodist Church as presently authorized and declared by the General Conference of said church includes the following provisions in Paragraphs 1530.1 and 1532.1:

"In a pastoral charge consisting of two or more local churches, a Church Local Conference, constituted and organized under the Discipline of The United Methodist Church in each local church therein, shall be vested with authority and power in matters relating to the real and personal property of the local church concerned. Such Church Local Conference shall elect the Board of Trustees of such local church in number and manner described in ¶1529, and the duties of such trustees, duly elected, shall be the same as and identical with the duties described in ¶1532. The duties, authority, and power vested in the Church Local Conference, in so far as they relate to the property, real

and personal, of the local church concerned, are the same as and identical with the authority and power vested in the Charge Conference of a pastoral charge of one local church (¶1532); and the authority, power and limitations therein set forth shall be applicable to the Church Local Conference as fully and to the same extent as if incorporated herein. The effect of the provisions for a Church Local Conference is to give to each local church in a charge of two or more churches, rather than to the pastoral Charge Conference, supervision over and control of its own property, subject to the limitations prescribed in the Discipline with regard to local-church property."

(The Book of Discipline of The United Methodist Church, p. 473 ¶1530.1 (1968))

"In a pastoral charge consisting of one local church, the Charge Conference, constituted as set forth in this Discipline, shall be vested with power and authority as hereinafter set forth in connection with the property, both real and personal, of the said local church, namely:

"1. If it so elects, to direct the Board of Trustees to

incorporate the local church, expressly subject, however, to the Discipline of The United Methodist Church and in accordance with the pertinent local laws and in such manner as will fully protect and exempt from any and all legal liability the individual officials and members, jointly and severally, of the local church, and the Charge, Annual, Jurisdictional, and General Conferences of The United Methodist Church, and each of them, for and on account of the debts and other obligations of every kind and description, of the local church."

(The Book of Discipline of The United Methodist Church, p. 475 ¶1532.1 (1968))

11. Defendants incorporated Bethany United Methodist Church into Bethany Chapel, Inc. without the direction of a Charge Conference and contrary to the provisions of the Discipline as set forth in Paragraphs 1530.1 and 1532.1.

12. The Discipline of The United Methodist Church as presently authorized and declared by the General Conference of said church includes the following provisions:

"Prior to the purchase by a

local-church corporation of any real estate, a resolution authorizing such action shall be passed by the Charge Conference in corporate session, or such other corporate body as the local laws may require, with the members thereof acting in their capacity as members of the corporate body, by a majority vote of those present and voting at any regular or special meeting called for that purpose; provided that not less than ten days' notice of such meeting and the proposed action shall have been given from the pulpit or in the weekly bulletin of the local church; and provided further, that written consent to such action shall be given by the pastor and the district superintendent; and provided further, that all such transactions shall have the approval of the Charge Conference."

(The Book of Discipline of The United Methodist Church, pp. 478-479 ¶1540 (1968).)

"Any real property owned by, or in which an unincorporated local church has any interest, may be sold, transferred, or mortgaged subject to the following procedure and conditions:

"1. Notice of the proposed action and the date and time of the regular or special meeting of the Charge Conference at which it is to be considered shall be given at least ten days prior thereto (except as local laws may otherwise provide) from the pulpit of the church or in its weekly bulletin.

"2. A resolution authorizing the proposed action shall be passed by a majority vote of the Charge Conference members present and voting and by a majority vote of the members of said church present and voting at a special meeting called to consider such action.

"3. The written consent of the pastor of the local church and the district superintendent to the proposed action shall be necessary and shall be affixed to the instrument of sale, transfer, or mortgage."

(The Book of Discipline of The United Methodist Church, p. 479 ¶1541.1 - ¶1541.3 (1968))

13. Defendants transferred Bethany United Methodist Church real property as hereinafter set forth to Bethany Chapel, Inc. on September 17, 1969 without Charge Conference authorization and

without the consent of plaintiff Cowdrick or the consent of plaintiff Dickhaut and contrary to the provisions of the Discipline as set forth in Paragraph 1541.

14. Defendant Bethany Chapel, Inc. purchased real property as hereinafter set forth from Bethany United Methodist Church on September 17, 1969 without Charge Conference authorization and without written consent of plaintiff Cowdrick or plaintiff Dickhaut and contrary to the provisions of the Discipline as set forth in Paragraph 1540.

15. The Discipline of The United Methodist Church as presently authorized and declared by the General Conference of said church includes the following provisions:

> "The United Methodist Church is organized as a connectional structure, and titles to all properties held at General, Jurisdictional, Annual, or District Conference levels, or by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline."

(The Book of Discipline of The United Methodist Church, p. 460 ¶1501

(1968))

"Trust Clauses in Deeds.--1. Except in conveyances which require that the real property so conveyed shall revert to the grantor if and when its use as a place of divine worship has been terminated, all written instruments of conveyance by which premises are held or hereafter acquired for use as a place of divine worship for members of The United Methodist Church or for other church activities shall contain the following trust clause:

"In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church; subject to the Discipline, usage, and ministerial appointments of said church as from time to time authorized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises."

(The Book of Discipline of The United Methodist Church, p. 460 ¶1503.1 (1968))

APPENDIX 6
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"If the local laws do not prescribe that title to property, both real and personal, shall be otherwise taken and held, in which event the provisions thereof shall take precedence and shall be observed and the provisions hereof subordinated thereto, the title to all real property now owned or hereafter acquired by an unincorporated local church, and any organization, board, commission, society, or similar body connected therewith, shall be held by and/or conveyed and transferred to its duly elected trustees, who shall be named in the written instrument conveying or transferring title, and their successors in office and their assigns, as the Board of Trustees of such local church (naming it and the individual trustees), in trust, nevertheless, for the use and benefit of such local church and of The United Methodist Church. Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (¶1503)."

(The Book of Discipline of The United Methodist Church, p. 477-478 ¶1537 (1968))

16. Defendants transferred

title to three parcels of real property, which they held in trust for The United Methodist Church, from Bethany United Methodist Church to Bethany Chapel, Inc. on September 17, 1969, described as follows:

"That part of the northwest quarter (1/4) of Section Number 28, Town 6 North, Range 9 East in PROVIDENCE TOWNSHIP, LUCAS COUNTY, OHIO, described as follows:

Commencing at the Southwest corner of the northwest quarter (1/4) of said Section Number 28, thence East on the center line of said Section, 3 chains and 50 links; thence North, 2 chains and 85 5/7 links; thence West, 3 chains and 50 links to the West line of said Section; thence South on said section line 2 chains and 85 5/7 links to the place of beginning.

Subject to legal highways."

"That part of the Southwest quarter (1/4) of Section nineteen (19), Town six (6) North, Range nine (9) East, in Providence Township, Lucas County, Ohio, bounded and described as follows:

Beginning at a point on the South line of said Section nineteen (19) which is five hundred sixty (560) feet Easterly from the Southwest corner of the East

one-half (1/2) of the Southwest quarter (1/4) of said Section nineteen (19); thence Northerly, parallel to the west line of the east half (1/2) of the southwest quarter (1/4) of Section nineteen (19), a distance of one hundred eighty-five and no tenth (185.0) feet; thence northwesterly, along a line forming an angle with the last described line of ninety-nine (99) degrees and seven (7) minutes turned from south to northwest, a distance of two hundred twenty-six and eighty hundredths (226.80) feet; at a point which is three hundred thirty-eight and ninety hundredths (338.90) feet easterly from the southwest corner of the east half (1/2) of the southwest quarter (1/4) of Section nineteen (19); thence easterly, along the south line of Section nineteen (19); a distance of two hundred twenty-one and ten hundredths (221.10) feet to the point of beginning.

Subject to legal highways."

"A parcel of land in the southwest fractional quarter of Section nineteen (19), Town Six (6) North, Range Nine (9) East, in Providence Township, Lucas County, Ohio described as follows: Beginning at a point on the South line of said quarter

1022.60 feet West of the South-east corner of said quarter, thence North at Right angles 135.73 feet, thence West at Right angles 320.55 feet, thence South 135.73 feet to a point on the South line of said quarter 321.9 feet West of the place of beginning, thence East on the South line of said quarter 321.9 feet to the place of beginning containing one acre of land."

17. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, and Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, held as an operating fund a certain amount of monies, the sum of which is unknown to plaintiffs but is known to defendants, in trust for the benefit of The United Methodist Church.

18. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, and Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, wrongfully transferred said operating fund to defendant Bethany Chapel, Inc.

19. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, held as a building fund a certain amount of monies, the sum of which

is unknown to plaintiffs, but is known to defendants, and in the approximate sum of Twenty-seven Thousand and No/100 Dollars ($27,000.00), in trust for the benefit of The United Methodist Church.

20. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, and Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, wrongfully transferred said building fund to defendant Bethany Chapel, Inc.

21. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, and Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, held miscellaneous personal property in trust for the benefit of The United Methodist Church.

22. Defendants Miller, Carlen, Thorn, Mrs. Conner, Barton, Mr. Box, Ryan, and Mrs. Box, as members of the Board of Trustees of Bethany United Methodist Church, transferred said personal property to defendant Bethany Chapel, Inc.

23. The aforesaid incorporation, transfer of properties, and interference with the duly authorized use of the church building for religious services have directly disrupted and damaged plaintiffs' functions in that proper and legal use of United Methodist Church property has been halted.

24. The aforesaid actions of defendants have adversely interfered with property and other rights of plaintiffs. Said actions have caused irreparable injury and damage to plaintiffs' functions and interests and have deprived plaintiffs of title to its rightful property. Defendants have threatened, and plaintiffs are informed and believe and therefore allege, that said unlawful use of church property and engaging of an Evangelist to speak, and thus causing additional irreparable injury and damage will continue unless and until restrained by order of this court. For all of the foregoing, plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray as follows:

a. That a temporary restraining order be issued forthwith against Bethany Chapel, Inc.; Fred Miller, Walter Carlen, Vance Eugene Thorn, Mrs. Earl Conner, Richard E. Barton, James Box and Junior H. Ryan, each individually and as a member of the Board of Trustees, Bethany United Methodist Church; Mrs. Harold Ott, individually and as a member and Special Treasurer of the Board of Trustees, Bethany United Methodist Church; and Mrs. James Box, individually and as Treasurer of the Board of Trustees, Bethany United Methodist Church enjoining them from:

(1) disposing of or interfering, conveying or encumbering

property held in trust for the benefit of The United Methodist Church;

(2) preaching or holding meetings in the buildings or on the property of Bethany United Methodist Church held in trust for the benefit of The United Methodist Church or interfering in any way with the duly assigned pastor, Harold G. Cowdrick, of Bethany United Methodist Church;

(3) holding any meetings or services in the church buildings not authorized by the Discipline of the Church;

b. That the court decree forthwith that title to the said three parcels of property conveyed from Bethany United Methodist Church to Bethany Chapel, Inc. is in plaintiff, The Ohio Annual Conference of The Methodist Church, and that the court order defendants to turn over control of and title in said properties to plaintiff, The Ohio Annual Conference of The Methodist Church;

c. That the court decree forthwith that title to the monies in said operating fund and building fund transferred from Bethany United Methodist Church to Bethany Chapel, Inc. is in plaintiff, The Ohio Annual Conference of The Methodist Church, and that the court order defendants to give a judicial and

equitable accounting of said funds since the said transfers to Bethany Chapel, Inc. and order defendants to transfer said monies to plaintiff, The Ohio Annual Conference of The Methodist Church;

d. That the court decree forthwith that title to any and all personal property transferred from Bethany United Methodist Church to Bethany Chapel, Inc. is in plaintiff, The Ohio Annual Conference of The Methodist Church, and that the court order defendants to turn over control of and title in said properties to plaintiff, The Ohio Annual Conference of The Methodist Church;

e. That, upon hearing on the Motion for Temporary Injunction filed herein, a temporary injunction be issued forthwith enjoining defendants from said same acts;

f. That, upon final determination of the issues herein presented, defendants and all other persons to whom notice of this proceeding shall come be permanently enjoined from said same acts;

g. That plaintiffs be afforded such other and additional relief, temporary or permanent, as may be just and proper; and

h. That plaintiffs be awarded their costs herein expended.

/s/ Fuller, Seney, Henry & Hodge
Fuller, Seney, Henry & Hodge
405 Madison Avenue
Toledo, Ohio 43604
241-7221
Attorneys for Plaintiffs

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

WALTER R. DICKHAUT, SR., being first duly sworn, deposes and says that he is one of the plaintiffs herein; that the several plaintiffs named in the title of this cause are united in interest in the subject of the action and plead together with this affiant; that he has read the foregoing amended petition; and that the facts stated and allegations contained in the foregoing amended petition are true.

/s/ Walter R. Dickhaut, Sr.
Walter R. Dickhaut, Sr.

Sworn to before me and subscribed in my presence this 6th day of April, 1970.

/s/ Michael M. Briley
Notary Public

CERTIFICATE OF SERVICE

Copies of the foregoing Amended Petition have been served upon Dan H. McCullough, Esq., 700 Security Bldg.,

Toledo, Ohio and George S. Taylor, Esq., 3433 Upton Avenue, Toledo, Ohio, attorneys for defendants, by mailing same to their respective offices this 6th day of April, 1970.

/s/ Dennis L. Jarvela
Of Attorneys for Plaintiffs

APPENDIX 6
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In the Supreme Court of the United States

October Term, 1971

No. 71-1377

THE OHIO ANNUAL CONFERENCE OF THE METHODIST CHURCH, an Ohio corporation not for profit, *et al.*,

Petitioners,

vs.

BETHANY CHAPEL, INC., an Ohio corporation not for profit, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION

DAN H. MCCULLOUGH
700 Security Building
Toledo, Ohio 43604

GEORGE S. TAYLOR
3433 Upton Avenue
Toledo, Ohio 43606
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO TEL. (216) 621-5647

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION

JURISDICTIONAL QUESTION

Respondent respectfully submits that the petition for certiorari filed herein should be denied for the following reasons:

1. The federal question raised by the petition has heretofore been determined by this Court.

2. The federal question raised by the petition has been decided by the state court in accord with the applicable decisions of this Court.

3. The decision of the state court is based on adequate and independent state grounds.

4. There are no special or important reasons for granting the petition. The questions raised by the petition are not of any great public or general interest but are only of interest to the parties involved.

As stated in Rule 19 of this Court, the review is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

This Court is already overburdened with work and should not be required to apply its valuable time to a case of this kind.

STATEMENT OF CASE

On September 9, 1969, the congregation of the Bethany United Methodist Church met and voted to withdraw from the Annual Conference of the United Methodist Church. The members of the congregation voted to incorporate under the name of Bethany Chapel, and on September 12, 1969, Articles of Incorporation were issued by the Secretary of the State of Ohio to Bethany Chapel, and on September 15, 1969, the official board of the Ohio corporation, Bethany Chapel, voted to transfer any funds to an account in the name of Bethany Chapel, and it was done.

On September 16, 1969, eight (8) trustees of the old church as trustees of Bethany United Methodist Church

executed a deed for the church property to Bethany Chapel, an Ohio corporation, and that deed was filed with the Auditor of Lucas County, Ohio, on September 17, 1969, and recorded in the office of the Recorder of Lucas County, Ohio, on September 17, 1969. Thus, all of the real and personal property of Bethany United Methodist Church had been transferred to the Ohio corporation Bethany Chapel by September 17, 1969, and there no longer existed a legal entity known as Bethany United Methodist Church, and when the petitioners filed the original petition in this cause on November 14, 1969, and named nine (9) trustees and officers of Bethany United Methodist Church, no such officers or trustees had any legal existence. Petitioners did name Bethany Chapel, Inc., and as of that time that was the only legal entity and the real and personal property was vested in that legal entity by virtue of the legal processes spelled out by the Legislature of the State of Ohio, and by "the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state," all being "secular instruments not requiring the resolution of religious tenets or doctrine." It is true that the petitioners named the nine (9) former officers and trustees of a then defunct church group, and named the corporation Bethany Chapel, Inc., and the same nine (9) trustees and officers in the amended petition filed on April 6, 1970 (Petitioners' Appendix 6), to which a demurrer was directed.

The Court of Appeals of Lucas County, Ohio, affirmed the judgment of the Common Pleas Court of Lucas County, Ohio. On November 1, 1971, the Court of Appeals of Lucas County, Ohio, entered its judgment affirming the judgment of the Common Pleas Court of Lucas County, Ohio (Petitioners' Appendix 3).

The petitioners filed a motion asking the Ohio Supreme Court to direct the Court of Appeals of Lucas County, Ohio to certify its record. In the courts of Ohio the petitioners cited the constitutional amendments and the cases cited in its brief herein, as well as many more cases. The Ohio Supreme Court overruled petitioners' motion in that court (Petitioners' Appendix 1).

The respondents deny that the issue herein is one of public or great general interest. Further, respondents say that the constitutional question herein has already been decided by this Court in conformity to the judgment from which petitioners seek a review.

REASONS WHY CERTIORARI SHOULD BE DENIED

The federal question attempted to be raised by petitioners in this case has heretofore been determined by this Court.

The federal question raised by the petitioners in this case has, heretofore recently been authoritatively determined by this Court in several decisions. The petition raises no new or novel questions.

We direct attention to the following decisions recently made by this Court and which adequately cover the subject: Petitioners cite *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154 (1970), Cert. denied 400 U.S. 827 (1970), but do not cite the entire history of that case.

On August 2, 1967, the Court of Appeals for the Ninth Judicial District of Ohio in No. 5914 found in favor of *Kelemen, et al.*, the defendants-appellees who had prevailed in the trial court.

On January 17, 1968, the Ohio Supreme Court overruled the motion to certify.

On January 17, 1968, the Ohio Supreme Court dismissed the appeal as of right.

On February 14, 1968, the Ohio Supreme Court denied the application for rehearing.

On February 24, 1969, in No. 91, this Court granted the petition for cert. and remanded the case to the Ohio Supreme Court for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church ante,* 393 U.S. 440, 89 S. Ct. 601.

On March 4, 1970, the Ohio Supreme Court remanded the case to the Court of Appeals for the Ninth Judicial District of Ohio, calling that Court's attention to the per curiam of this Court. 21 Ohio St. 2d 154.

On April 29, 1970, the Ohio Supreme Court denied the application for rehearing.

On October 12, 1970, this Court denied petition for cert. 400 U.S. 827.

On August 11, 1971, the Court of Appeals for the Ninth Judicial District of Ohio reversed its decision of August 2, 1967, and in Cause No. 5914 used these words:

> ". . . It is such determinations that we are prevented from making by the pronouncements of three of the Justices of the Supreme Court of the United States, in language from the case of *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg,* 396 U.S. 367, 24 L ed 2d 582, 90 S. Ct. 499 at 24 L ed 2d 584:

"* * * To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolutions of the controversy. In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and *without extensive inquiry into religious polity.*' (Emphasis by Court of Appeals.)

"When the *Sharpsburg case, supra,* is read, along with the case of *Presbyterian Church v. Hull Church, supra,* we find, according to the pronouncements therein, that the First Amendment to the Constitution of the United States directs civil courts to decide church property controversies without resolving underlying disputes over religious doctrine and to refrain from an extended search of church practice. Therefore, if a conclusion in favor of hierarchal authority is reached herein, we would be doing that which the First Amendment directs us not to do."

On January 28, 1972, the Ohio Supreme Court dismissed the appeal of *Kelemen, et al.* in No. 71-753, see OHIO BAR Vol. XLV, No. 6, February 7, 1972 at page 165 (the same day on which the Ohio Supreme Court dis-

missed the appeal in this case in No. 71-770, page 165, OHIO BAR Vol. XLV, No. 6).

On March 4, 1972, a petition for certiorari was filed in this Court and the cause appears as Case Docket 71-1128 in 40 LAW WEEK, page 3444, *Kelemen, et al., Petitioners v. Serbian Orthodox Church.*

Further proceedings were had in that case which appear at page 3455 of 40 LAW WEEK.

On April 4, 1972, a summary of the lower court's decision appears at page 3487 of 40 LAW WEEK.

On April 24, 1972, this Court entered a summary order saying that review was denied. 40 LAW WEEK, page 3511. The question in the *Serbian* case was and is the same question involved in our case. The Court of Appeals of Lucas County, Ohio cited the 1970 decision of the Ohio Supreme Court in *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, in affirming the ruling of the trial court.

Eldership v. Church of God at Sharpsburg, 396 U.S. 367, 90 S. Ct. 499 (January 19, 1970);

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 396 U.S. 1041, 90 S. Ct. 680 (January 19, 1970);

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601 (January 27, 1969).

This Court is already heavily burdened with cases involving new and important issues of general public interest. Our case is of interest only to the immediate parties concerned.

Petitioner also attempts to raise some other federal questions, but they are without substance and do not merit the attention of this Court.

The state court has decided all federal questions submitted to it in accord with the applicable decisions of this Court.

The established law of Ohio as to connectional churches that is cited by petitioners ceased to be the law of Ohio on that day in 1970 when the Ohio Supreme Court said:

> ". . . All the agonies of a church controversy are discernible from a review of this case, but we are convinced by the rule of the *Hull Memorial* case that the civil court's role as a tribunal to bring order to church controversies is narrowly limited.
>
> "The control of the name and property, of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instrument not requiring the resolution of religious tenets or doctrine. . . ."
>
> *Serbian Orthodox Church v. Kelemen*, 21 Ohio St. 2d 154, at pages 161, 162.

A decision bottomed upon this Court's decision in *Eldership v. Church of God at Sharpsburg*, 396 U.S. 367, the January 19, 1970 decision in which Mr. Justice Brennan said at page 370:

> ". . . Neutral principles of law, developed for use in all property disputes, Presbyterian Church, supra, at

449, 21 L Ed 2d at 665, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. . . ."

On that day the Ohio decisions cited ceased to be applicable to the fact situation in the *Serbian* and the *Bethany* cases.

In deciding Bethany the state courts had before them the *Eldership* case decided January 19, 1970, and the 1969 decision including the decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, to which case this Court made reference in its remand of the *Serbian Orthodox Church v. Kelemen* case on February 29, 1969, 393 U.S. 527.

The decision of the Ohio Court rests on independent and adequate state grounds.

In deciding *Kelemen* after the remand the Ohio Supreme Court said:

". . . Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine. There are no deeds or other written evidence of conveyance from the local congregation either to the diocese or the Mother Church. . . ."

21 Ohio St. 2d 154 at 160

Petitioners make no claim that the respondents, or any of them, had ever at any time executed a deed transferring title to any real property to petitioners, or that the respondents had at any time executed or created a trust thus holding the property, real or personal, for the benefit of petitioners. It all comes down to this—the only claim that is made by petitioners is that the petitioners adopted paragraph 1519.3 of the Book of Discipline. (Petitioners' Appendix 6) of the United Methodist Church. In plain words, the petitioners say that when the leaders of the Evangelical United Brethren Church and the Methodist Church met in Chicago on November 11, 1966, and by vote merged the two churches and adopted the Book of Discipline of the United Methodist Church in 1968, that by those actions the newly created United Methodist Church became vested with all of the real and personal property of all of the congregations of both sects situated any place in the United States, and that without the consent of the members of Bethany Chapel, or any other congregational church.

At no place in the amended petition (Petitioners' Appendix 6), to which the demurrer was directed, did the petitioners claim title to real and personal property except in paragraph 1519.3 which paragraph was adopted by petitioners in 1968. At no place in the amended petition do the petitioners claim that the respondents created a trust for the benefit of the United Methodist Church.

Petitioners in their amended petition state the claimed facts as to the three (3) parcels of real estate, but at no place make claim that the Ohio Annual Conference of the Methodist Church was named as the grantee in any of the deeds whereby Bethany Chapel, or any of its predecessors, received title to the real estate, or that a trust

for the benefit of petitioners, or any of them, was set out in the deeds, or any other instrument or instruments. The same is true as to the two (2) separate funds in the amount of $27,000.00.

Petitioners make claim that the United Methodist Church is a connectional church. The trial court found that under the decision law of both this Court and the Ohio Supreme Court, that is not true, and the Court of Appeals of Lucas County, Ohio affirmed that judgment (Petitioners' Appendix 3).

The trial court correctly ruled that under Ohio law that the petitioners were seeking to create an express trust by their own act in adopting paragraph 1503.1 of the Book of Discipline and paragraph 1537 of the Book of Discipline (Petitioners' Appendix 6), when the Ohio law says that an express trust must be created by the settlor of the trust, and that a court of equity will not create one for him. In *Church v. Kelemen, supra,* the Ohio Supreme Court rejected the implied-trust theory of real property.

Petitioners give the whole thing away by setting out paragraph 1537 of the Book of Discipline (Petitioners' Appendix 6) where we find these words:

> "Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline paragraph 1530."

The petitioners sought to create a trust by their own act. Under the law of Ohio that could not be done:

> "But an express trust must be created by the settlor; the court of equity will not create it for him."
>
> Sec. 23, 53 O. JUR. 2d, pages 431, 432.

There are no special or important reasons for granting the petition. The questions raised by the petition are not of any great public or general interest but are only of interest to the parties involved.

Petitioners seek to assign nonexistent reasons for granting of the petition. Petitioners claim great public or general interest exists in this case involving a handful of churchmen who are members of Bethany Chapel. In its petition reference is made to the monstrous injustice arising from the decision of the Ohio Supreme Court in *Bethany*. If counsel for the respondents understand the facts, that injustice grew out of the Ohio courts awarding to its true owners the property that was the subject of the controversy, and that decision was bottomed upon the decision of this Court. Petitioners bottomed their claims in the trial court upon the provisions of the Book of Discipline of the United Methodist Church and accused respondents of taking and holding title under the provisions of the secular law of Ohio. The Ohio courts merely followed the law as handed down by this Court and adopted by the highest courts in Ohio.

CONCLUSION

To summarize our argument, it is our contention that the judgment of the state court is correct and the petition for certiorari should be overruled.

The federal question attempted to be raised by petitioners in this case has already been completely and authoritatively determined by this Court.

The state court has correctly interpreted and applied the decisions of this Court.

The petition fails to state any new or novel question which has not already been decided by this Court. The issues have no great public interest but are of interest to the parties only. There are no special or important reasons for granting the petition.

To grant the petition would only unnecessarily burden this Court with work, when the Court is already overburdened.

The decision of the state court was correct and should be allowed to stand. The petition for certiorari should be denied.

Respectfully submitted,

DAN H. MCCULLOUGH
700 Security Building
Toledo, Ohio 43604

GEORGE S. TAYLOR
3433 Upton Avenue
Toledo, Ohio 43606

Attorneys for Respondents

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971

No. 71-1377

The Ohio Annual Conference of The Methodist Church, an Ohio corporation not for profit, et al., Petitioners,

v.

Bethany Chapel, Inc., an Ohio corporation not for profit, et al., Respondents.

PETITIONERS' REPLY BRIEF

Donald M. Hawkins
*Thomas L. Dalrymple
Dennis L. Jarvela
300 Madison Avenue
Telephone: (419) 255-8220
Toledo, Ohio 43604

Attorneys for Petitioners

*Counsel of Record and Member of Bar of this Court upon whom Service is to be made.

Respondents' brief well demonstrates why the writ of certiorari should issue.

The recitations of the initial paragraph and a half of respondents' statement of the case (pp. 2-3, Brief of Respondents in Opposition) are unsupported by record references because they are nowhere in the record of this case. Since the decision below was upon demurrer to petitioners' pleading, petitioners have never yet had an opportunity to present their evidence; but respondents recognize by their resort to evidential assertions outside of the record that their position as embraced by the courts below cannot be sustained upon the basis of the record. Hence, petitioners have been denied due process of law.

Reduced to its simplest form, respondents basic contention is that, whenever the word "church" appears in litigation, the civil courts must refrain from proceeding further. This is neither the law nor what the law should be nor what the constitution permits. Both due process and equal protection entitle petitioners and other church officials and groups to more from the civil courts.

First Amendment foreclosure of civil court consideration of matters affecting the Serbian Orthodox Church, shown by evidence to have an unusual

structure, is quite different from curtaining off from civil court consideration property disputes affecting the United Methodist Church, whose governing body and property control rules are set forth plainly without question in the record. An implied trust doctrine dependent upon tenets of religious faith is in sharp contrast to express trusts created upon conveyances of properties to trustees under terms then set forth in a written Discipline subsequently modified and reaffirmed. Consequently, the legal authorities to which respondents refer are not conclusive in this case; and the applicable law requires enunciation.

A writ of certiorari should therefore issue to review the judgment below.

Respectfully submitted,

Of Counsel for Petitioners:

Fuller, Henry, Hodge & Snyder
300 Madison Ave.
Toledo, Ohio 43604

Donald M. Hawkins
Thomas L. Dalrymple
Dennis L. Jarvela

300 Madison Avenue
Tel. (419) 255-8220
Toledo, Ohio 43604

Attorneys for Petitioners

CERTIFICATE OF SERVICE

Three (3) copies each of the foregoing reply brief have been deposited in the mail with first class postage prepaid this 25th day of May, 1972, to Dan H. McCullough and George S. Taylor, attorneys for respondents herein, at their offices at 700 Security Building, Toledo, Ohio 43604, and 3433 Upton Avenue, Toledo, Ohio 43613, respectively.

s/ TLDalrymple
Thomas L. Dalrymple,
an Attorney for
Petitioners